

## § 1467.5

by NRCS. To enroll in WRP, the CRP contract for the property must be terminated or otherwise modified subject to such terms and conditions as are mutually agreed upon by FSA and the landowner.

(g) *Ineligible land.* The following land is not eligible for enrollment in the WRP:

(1) Converted wetlands if the conversion was commenced after December 23, 1985;

(2) Land that contains timber stands established under a CRP contract or pastureland established to trees under a CRP contract;

(3) Lands owned by an agency of the United States, other than held in trust for Indian Tribes;

(4) Lands owned in fee title by a State, including an agency or a subdivision of a State, or a unit of local government;

(5) Land subject to an easement or deed restriction which, as determined by NRCS, provides similar restoration and protection of wetland functions and values as would be provided by enrollment in WRP; and

(6) Lands where implementation of restoration practices would be undermined due to on-site or off-site conditions, such as risk of hazardous substances either on-site or off-site, proposed or existing rights of way, either on-site or off-site, for infrastructure development, or adjacent land uses, such as airports, that would either impede complete restoration or prevent wetland functions and values from being fully restored.

[74 FR 2328, Jan. 15, 2009, as amended at 74 FR 26284, June 2, 2009]

## § 1467.5 Application procedures.

(a) *Application for participation.* To apply for enrollment, a landowner must submit an Application for Participation in the WRP.

(b) *Preliminary agency actions.* By filing an Application for Participation, the landowner consents to an NRCS representative entering upon the land for purposes of assessing the wetland functions and values, and for other activities, such as the development of the preliminary WRPO, that are necessary or desirable for NRCS to evaluate applications. The landowner is entitled to

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accompany an NRCS representative on any site visits.

(c) *Voluntary reduction in compensation.* In order to enhance the probability of enrollment in WRP, a landowner may voluntarily offer to accept a lesser payment than is being offered by NRCS.

## § 1467.6 Establishing priority for enrollment of properties in WRP.

(a) When evaluating easement, 30-year contract, or restoration cost-share agreement offers from landowners, the NRCS, with advice from the State Technical Committee, may consider:

(1) The conservation benefits of obtaining an easement, or other interest in the land;

(2) The cost effectiveness of each easement or other interest in eligible land, so as to maximize the environmental benefits per dollar expended;

(3) Whether the landowner or another person is offering to contribute financially to the cost of the easement or other interest in the land to leverage Federal funds;

(4) The extent to which the purposes of the easement program would be achieved on the land;

(5) The productivity of the land; and

(6) The on-farm and off-farm environmental threats if the land is used for the production of agricultural commodities.

(b) To the extent practicable, taking into consideration costs and future agricultural and food needs, NRCS shall give priority to:

(1) Obtaining permanent easements over shorter term easements; and

(2) Acquiring easements based on the value of the easement for protecting and enhancing habitat for migratory birds and other wildlife, in consultation with FWS.

(c) NRCS, in consultation with the State Technical Committee, may place higher priority on certain geographic regions of the State where restoration of wetlands may better achieve State and regional goals and objectives.

(d) Notwithstanding any limitation of this part, the State Conservationist may, at any time, exclude enrollment of otherwise eligible lands if the participation of the adjacent landowners

is essential to the successful restoration of the wetlands and those adjacent landowners are unwilling or ineligible to participate. The State Conservationist may coordinate with other Federal, State, and nonprofit organizations to encourage the restoration of wetlands on adjacent ineligible lands, especially in priority geographic areas.

(e)(1) The Chief will conduct an assessment during fiscal year 2008 and each subsequent fiscal year for the purpose of determining the interest and allocations for the Prairie Pothole Region to enroll land determined eligible under § 1467.4(d)(5) of this part into 30-year easements. Annually, the Chief will provide specific instructions for the assessment in writing to the applicable State Conservationists.

(2) The Chief will make an adjustment to the allocation for an applicable State for a fiscal year, based on the results of the assessment conducted under paragraph (e)(1) of this section for the State during the previous fiscal year.

#### § 1467.7 Enrollment process.

(a) *Tentative Selection.* Based on the priority ranking, NRCS will notify an affected landowner of tentative acceptance into the program.

(b) *Effect of notice of tentative selection.* The notice of tentative acceptance into the program does not bind NRCS or the United States to enroll the proposed project in WRP, nor does it bind the landowner to continue with enrollment in the program. The notice informs the landowner of NRCS' intent to continue the enrollment process on their land unless otherwise notified by the landowner.

(c) *Acceptance and effect of offer of enrollment.*(1) *Easement.* For applications requesting enrollment through an easement, an option agreement to purchase will be presented by NRCS to the landowner, which will describe the easement area; the easement compensation amount; the easement terms and conditions; and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the option agreement to purchase. NRCS will continue with

easement acquisition activities after the property has been enrolled.

(2) *Restoration cost-share agreement.* For applications requesting enrollment through the restoration cost-share agreement option, a restoration cost-share agreement shall be presented by NRCS to the landowner, which will describe the enrolled area, the agreement terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the restoration cost-share agreement. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(3) *30-year contract.* For applications requesting enrollment through the 30-year contract option, a 30-year contract shall be presented by NRCS to the landowner, which will describe the contract area, the contract terms and conditions, and other terms and conditions for participation that may be required by NRCS as appropriate. The landowner accepts enrollment in the WRP by signing the 30-year contract. NRCS will proceed with implementation of the WRPO after the property has been enrolled.

(d) *Restoration responsibility and the scope of enrollment.* (1) The enrollment document establishes the terms of enrollment consistent with the terms and conditions of this part, and identifies the:

(i) Scope of the agreement between NRCS and the landowner;

(ii) Basis for NRCS to obligate funds; and

(iii) Nature and method through which NRCS will provide WRP technical and financial assistance to the landowner.

(2) The option agreement to purchase between NRCS and the landowner under the easement option constitutes the agreement for:

(i) Granting an easement on the enrolled land as set forth under § 1467.11;

(ii) Implementing a WRPO which provides for the restoration and protection of the functions and values of wetlands;

(iii) Recording the easement in accordance with applicable State law; and